

## HOUSE BILL NO. 180

INTRODUCED BY LAKE

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROCEDURES FOR FILING APPLICATIONS WITH THE SECRETARY OF STATE REGARDING THE NAME OF CERTAIN CORPORATIONS, LIMITED LIABILITY COMPANIES, AND PARTNERSHIPS; ELIMINATING CERTAIN REQUIREMENTS THAT DUPLICATE COPIES OF CERTAIN APPLICATIONS, CERTIFICATES, AND REGISTRATIONS WITH RESPECT TO THE NAME OF CERTAIN CORPORATIONS, LIMITED LIABILITY COMPANIES, AND PARTNERSHIPS BE FILED WITH THE SECRETARY OF STATE; SPECIFYING REQUIREMENTS FOR REGISTRATION OF A FOREIGN LIMITED PARTNERSHIP; ~~AND~~ AMENDING SECTIONS 30-13-204, 30-13-208, 30-13-210, 30-13-212, ~~35-1-1207~~, 32-1-112, 35-1-1309, 35-2-119, 35-2-1109, 35-8-205, 35-8-206, 35-8-212, 35-10-113, 35-10-622, 35-10-627, 35-12-606, 35-12-1302, AND 35-12-1304, MCA; AND REPEALING SECTION 35-1-1207, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 30-13-204, MCA, is amended to read:

**"30-13-204. Filing application for registration -- issuance of certificate.** (1) ~~One original and one copy of~~ The applicant shall complete and submit an application for registration of an assumed business name ~~shall be executed and delivered along with all applicable fees~~ to the secretary of state. If the secretary of state finds ~~that~~ the application complies with the provisions of this part, ~~he~~ the secretary of state shall, ~~when all fees have been paid as provided in this part:~~

(a) ~~endorse on the original and the copy~~ application the word "filed" and the ~~month, day, and year of the filing thereof~~ date on which the application was filed;

(b) file the ~~original~~ application in ~~his~~ the secretary of state's office; and

(c) issue a certificate of registration, ~~to which he shall affix the copy.~~

~~———(2) The certificate of registration, together with the copy of the application for registration of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.~~

~~(3)(2)~~ (2) The registration of an assumed business name remains in effect until ~~amended or~~ canceled."

1  
2       **Section 2.** Section 30-13-208, MCA, is amended to read:

3       **"30-13-208. Filing of application for renewal of registration of assumed business name --**  
4 **issuance of certificate ~~thereon.~~** ~~(4)~~ If the secretary of state finds that the application complies with the  
5 provisions of this part and that all fees have been paid, ~~he the secretary of state shall, when all fees have been~~  
6 ~~paid as provided in this part:~~

7       ~~(a)(1)~~ endorse on the original and the copy application the word "filed" and the month, day, and year  
8 of the filing thereof date on which the application was filed;

9       ~~(b)(2)~~ file the original application in ~~his~~ the secretary of state's office; and

10       ~~(c)(3)~~ issue a certificate of renewal, ~~to which he shall affix the copy.~~

11       ~~———(2) The certificate of renewal, together with the copy of the application for renewal of registration of an~~  
12 ~~assumed business name affixed thereto by the secretary of state, shall be returned to the applicant."~~

13  
14       **Section 3.** Section 30-13-210, MCA, is amended to read:

15       **"30-13-210. Filing amendment to registration of assumed business name -- issuance of**  
16 **certificate.** ~~(1) One original and one copy of an amendment to the registration of an assumed business name~~  
17 ~~must be delivered to the secretary of state. The~~ An application for amended registration of an assumed business  
18 name must be filed with the secretary of state and must include ~~but is not limited to the following information:~~

19       (a) the complete assumed business name prior to adoption of the amendment;

20       (b) the complete new assumed business name, if applicable;

21       (c) the name and address of the registrant, including street name and number of the registrant's  
22 business office;

23       (d) if the name of any person having an interest in the business with a registered assumed business  
24 name is to be changed, the new name of the person having an interest in the business with the registered  
25 assumed business name;

26       (e) if a person ~~or persons having~~ who has had an interest in a business with a registered assumed  
27 name withdraws or dies, a statement of that ~~fact~~ the person has withdrawn or died; ~~and~~

28       (f) a statement that the amended registration of assumed business name supersedes the original  
29 registration and all amendments to the original registration; and

30       (g) all other information determined by the secretary of state to be necessary.

(2) If the secretary of state finds that the application for amended registration of the assumed business name complies with this part and that all applicable fees have been paid, the secretary of state shall, ~~when all fees have been paid as provided in this part:~~

(a) ~~endorse on the original and the copy application for amendment the word "filed" and the month, day, and year of the filing date on which the application for amendment was filed;~~

(b) file the original application for amendment in the secretary of state's office; and

(c) issue a certificate of amendment, ~~to which the secretary of state shall affix the copy.~~

~~—— (3) The certificate of amendment, together with the copy of the amendment required in subsection (1), must be returned to the registrant.~~

~~(4)(3) The failure of If the registrant of an assumed business name fails to comply with the requirements of this section, the secretary of state shall cancel results in the cancellation by the secretary of state of the registration."~~

**Section 4.** Section 30-13-212, MCA, is amended to read:

**"30-13-212. Filing application for reservation of assumed business name -- issuance of certificate thereon.** ~~(1) One original and one copy of~~ The applicant shall complete and submit an application for reservation of an assumed business name, duly executed by the applicant, shall be delivered and all applicable fees to the secretary of state. If the secretary of state finds the application complies with the provisions of this part, he the secretary of state shall, when all fees have been paid as provided in this part:

~~(a)(1) endorse on the original and the copy application the word "filed" and the month, day, and year of the filing thereof date on which the application was filed;~~

~~(b)(2) file the original application in his the secretary of state's office; and~~

~~(c)(3) issue a certificate of reservation, to which he shall affix the copy.~~

~~—— (2) The certificate of reservation, together with the copy of the application for reservation of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant."~~

**Section 5.** Section 35-1-1207, MCA, is amended to read:

**"35-1-1207. License fee.** ~~(1) In addition to the filing fee authorized by 35-1-1206, the secretary of state shall charge and collect from each domestic corporation a license filing fee at the time of when:~~

~~(a) filing its articles of incorporation;~~

1 ~~—— (b) filing articles of amendment, if any; and~~  
2 ~~—— (c) filing articles of merger or consolidation, if any.~~  
3 ~~—— (2) The license fee for domestic corporations must be set and deposited in accordance with 2-15-405.~~  
4 ~~—— (3)(2) In addition to the filing fee authorized by 35-1-1206, the secretary of state shall charge and collect~~  
5 ~~from each foreign corporation a license filing fee at the time of filing an application for a certificate of authority~~  
6 ~~to transact business.~~  
7 ~~—— (3) The fee fees to be charged under subsections (1) and (2) must be set and deposited in accordance~~  
8 ~~with 2-15-405."~~

10 **SECTION 5.** SECTION 32-1-112, MCA, IS AMENDED TO READ:

11 **"32-1-112. Applicability of corporation law.** (1) Except as provided in subsection (2), the provisions  
12 of Title 35, chapter 1, apply to banks unless a section in this title or a rule or order issued under this chapter is  
13 inconsistent with Title 35, chapter 1.

14 (2) The provisions of 35-1-114, 35-1-115(4) through (10), 35-1-308(1), 35-1-623(2), 35-1-936,  
15 35-1-1106, 35-1-1107, ~~35-1-1207~~, and Title 35, chapter 1, part 10, do not apply to banks."

17 **Section 6.** Section 35-1-1309, MCA, is amended to read:

18 **"35-1-1309. Filing duty of secretary of state.** (1) If a document delivered to the office of the secretary  
19 of state for filing satisfies the requirements of 35-1-217 and 35-1-218, if applicable, the secretary of state shall  
20 file it.

21 (2) The secretary of state shall file a document by stamping or otherwise endorsing on the document  
22 "Filed", together with the secretary of state's name, official title, and the date and time of receipt, on the original,  
23 the document copy, and the receipt was received by the secretary of state for the filing fee. Except as provided  
24 in 35-1-315 and 35-1-1034, after filing a document, the secretary of state shall deliver a confirmation certification  
25 letter to the domestic or foreign corporation or its representative, ~~along with the filing fee receipt or as~~  
26 acknowledgment of receipt if no fee is required that the document has been filed and all applicable fees have  
27 been paid.

28 (3) If the secretary of state refuses to file a document, the secretary of state shall return it to the  
29 domestic or foreign corporation or ~~its~~ the corporation's representative within 10 days after the document was  
30 delivered to the secretary of state, together with a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

(a) affect the validity or invalidity of the document in whole or part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect."

**Section 7.** Section 35-2-119, MCA, is amended to read:

**"35-2-119. Filing requirements.** All of the following requirements must be met before a document is ~~entitled to~~ may be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. It may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. However, a corporate name ~~need~~ does not need to be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations ~~need~~ does not need to be in English if it is accompanied by a reasonably authenticated English translation.

(5) The document must be executed:

(a) by the presiding officer of ~~its~~ the corporation's board of directors, its president, or another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(6) The person executing the document shall sign it and state beneath or opposite the signature ~~his~~ the person's name and the capacity in which the person signs. The document may but ~~need~~ does not need to contain the corporate seal, an attestation by the secretary or an assistant secretary, or an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for a document under 35-2-1108.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

- ~~(a) one copy, except as provided in 35-2-311 and 35-2-829;~~
- ~~(b)(a)~~ the correct filing fee; and
- ~~(c)(b)~~ any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law."

**Section 8.** Section 35-2-1109, MCA, is amended to read:

**"35-2-1109. Filing duty of secretary of state.** (1) If a document delivered to the office of the secretary of state for filing satisfies the applicable requirements of 35-2-119 and 35-2-120, the secretary of state shall file it.

(2) The secretary of state shall file a document by stamping or otherwise endorsing on the document "Filed", ~~together with~~ the secretary of state's ~~name~~, official title, and the date and the time of receipt, ~~on the original, the copy of the~~ secretary of state received the document, and the receipt for the filing fee. Except as provided in 35-2-314 and 35-2-830, after filing a document, the secretary of state shall deliver ~~the document copy~~ a certification letter to the domestic or foreign corporation or its representative, ~~together with the filing fee receipt or acknowledgment of receipt if no fee is required~~ as acknowledgment that the document has been filed and the fee has been paid.

(3) ~~Upon refusing~~ If the secretary of state refuses to file a document, the secretary of state shall return ~~it the document~~ to the domestic or foreign corporation or its representative within 10 days after the document was delivered, ~~together with~~ to the secretary of state and include a brief written explanation of the reason ~~or reasons~~ for the refusal.

(4) The secretary of state's duty concerning the documents under this section is ministerial. Filing or refusal to file a document does not:

- (a) affect the validity or invalidity of the document in whole or in part;
- (b) relate to the correctness or incorrectness of information contained in the document; or
- (c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect."

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2       **Section 9.** Section 35-8-205, MCA, is amended to read:

3       **"35-8-205. Filing with secretary of state.** (1) ~~The original signed copy, together with a duplicate copy~~  
4 ~~that may be either a signed, photocopied, or confirmed copy, of the~~ articles of organization or any other  
5 document required to be filed pursuant to this chapter must be delivered to the secretary of state. If the secretary  
6 of state determines that the documents conform to the filing provisions of this chapter and that all required filing  
7 fees have been paid, the secretary of state shall, ~~when all required filing fees have been paid~~:

8           (a) endorse on ~~each the signed original and duplicate copy~~ document the word "filed" and the date and  
9 time ~~of its acceptance~~ of accepting the document for filing;

10          (b) retain the signed ~~original~~ document in the secretary of state's files; and

11          (c) ~~return the duplicate copy~~ send a certification letter to the person who filed it the document or to the  
12 person's representative.

13          (2) If the secretary of state is unable to make the determination required for filing by subsection (1) at  
14 the time any documents are delivered for filing, the documents are considered to have been filed at the time of  
15 delivery if the secretary of state subsequently determines that the documents as delivered conform to the filing  
16 provisions of 35-8-201 through 35-8-211."  
17

18       **Section 10.** Section 35-8-206, MCA, is amended to read:

19       **"35-8-206. Effect of ~~delivery or filing of~~ articles of organization.** (1) A limited liability company is  
20 formed when the articles of organization are ~~delivered to~~ filed with the secretary of state for filing.

21          (2) ~~Each copy of the~~ The articles of organization that are stamped "filed" and marked with the filing date  
22 ~~is are~~ are conclusive evidence that all conditions precedent required to be performed by the organizers have been  
23 complied with and that the limited liability company has been legally organized and formed under this chapter."  
24

25       **Section 11.** Section 35-8-212, MCA, is amended to read:

26       **"35-8-212. License fee Filing fees.** (1) In addition to the filing fee authorized by 35-8-211, the secretary  
27 of state shall charge and collect from each foreign limited liability company:

28          (a) ~~a license~~ an additional filing fee at the time of filing its articles of organization; and

29          (b) ~~a license~~ an additional filing fee at the time of filing an application for a certificate of authority to  
30 transact business.

(2) The fees authorized in this section must be set and deposited in accordance with 2-15-405."

**Section 12.** Section 35-10-113, MCA, is amended to read:

**"35-10-113. Filing with secretary of state.** (1) ~~The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or confirmed copy, of any~~ A signed statement filed pursuant to this chapter must be delivered to the secretary of state. If the secretary of state determines that the ~~documents conform~~ statement conforms to the filing provisions of this chapter and all required filing fees have been paid, the secretary of state shall:

(a) endorse on ~~each the signed original and duplicate copy statement~~ the word "filed" and the date and time of acceptance for filing;

(b) retain the signed ~~original~~ statement in the secretary of state's files; and

(c) ~~return the duplicate copy~~ send a certification letter to the person who filed it the statement or the person's representative.

(2) The secretary of state may by rule prescribe and furnish forms or computer formats for any statement to be filed with the secretary of state under this chapter. If the secretary of state requires it, the use of any forms or formats is mandatory.

(3) All partnerships filing statements pursuant to this chapter shall first register the business name as an assumed business name pursuant to Title 30, chapter 13, part 2."

**Section 13.** Section 35-10-622, MCA, is amended to read:

**"35-10-622. Statement of dissociation -- filing.** (1) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(2) If a statement of dissociation is filed, the statement must be filed with the same entity with which the original partnership agreement was filed.

~~(2)(3)~~ A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of 35-10-310(4) and (5).

~~(3)(4)~~ For the purposes of 35-10-301, 35-10-620, and 35-10-621(2), a person who is not a partner is considered to have notice of the dissociation 90 days after the statement of dissociation is filed."



1           **Section 14.** Section 35-10-627, MCA, is amended to read:

2           **"35-10-627. Statement of dissolution.** (1) After dissolution, a partner who has not wrongfully  
3       dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has  
4       dissolved and is winding up its business.

5           (2) If a statement of dissolution is filed, the statement must be filed with the same entity with which the  
6       original partnership agreement was filed.

7           ~~(2)~~(3) A statement of dissolution cancels a filed statement of partnership authority for the purposes of  
8       35-10-310(4) and is a limitation on authority for the purposes of 35-10-310(5).

9           ~~(3)~~(4) For the purposes of 35-10-301 and 35-10-626, a person who is not a partner is considered to  
10      have notice of the dissolution and the limitation on the partners' authority as a result of the statement of  
11      dissolution 90 days after it is filed.

12          ~~(4)~~(5) After filing and, if appropriate, recording a statement of dissolution, the dissolved partnership may  
13      file and, if appropriate, record a statement of partnership authority that will operate with respect to a person who  
14      is not a partner as provided in 35-10-310(4) and (5) in any transaction, whether or not the transaction is  
15      appropriate for winding up the partnership business."

16  
17          **Section 15.** Section 35-12-606, MCA, is amended to read:

18          **"35-12-606. Filing in the office of the secretary of state.** (1) The certificate of limited partnership and  
19      of any certificates of amendment, restatement, or cancellation or of any judicial decree of amendment,  
20      restatement, or cancellation must be delivered to the secretary of state. A person who executes a certificate as  
21      an agent or fiduciary ~~need~~ does not need to exhibit evidence of the person's authority as a prerequisite to filing.  
22      Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees  
23      required by law the secretary of state shall:

24          (a) endorse on the document the word "filed" and the ~~day, month, and year of the filing~~ date on which  
25      the document was filed;

26          (b) file the ~~original~~ document in the secretary of state's office; and

27          (c) ~~return the copy~~ send a certification letter to the person who filed it the document or the person's  
28      representative.

29          (2) Upon the filing of a certificate of amendment, restatement, or judicial decree of amendment in the  
30      office of the secretary of state, the certificate of limited partnership is amended or restated as set forth in the

1 certificate. Upon the effective date of a certificate of cancellation or a judicial decree of cancellation, the  
2 certificate of limited partnership is canceled."

3  
4 **Section 16.** Section 35-12-1302, MCA, is amended to read:

5 **"35-12-1302. Registration.** Before transacting business in this state, a foreign limited partnership shall  
6 register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary  
7 of state the application for registration as a foreign limited partnership, signed and sworn to by a general partner  
8 and setting forth:

9 (1) the name of the foreign limited partnership ~~and, if different, the name under which it proposes to~~  
10 ~~transact business and register in this state~~ or the fictitious name adopted by a foreign limited partnership  
11 authorized to transact business in this state because its real name is unavailable;

12 (2) the state in which ~~it~~ the foreign limited partnership was formed and the date of ~~its~~ the foreign limited  
13 partnership's formation;

14 (3) the name and address of any agent for service of process on the foreign limited partnership whom  
15 the foreign limited partnership desires to appoint; ~~which.~~ An agent appointed under this section must be an  
16 individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this  
17 state and with a place of business in this state;

18 (4) a statement that the secretary of state is appointed the agent of the foreign limited partnership for  
19 service of process if an agent has not been appointed pursuant to subsection (3) or, if an agent was appointed,  
20 the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable  
21 diligence;

22 (5) the address of the office required to be maintained in the state of ~~its~~ the foreign limited partnership's  
23 organization by the laws of that state or, if not so required, of the principal office of the foreign limited  
24 partnership;

25 (6) the name and business address of each general partner; and

26 (7) the address of the office at which is kept a list of the names and addresses of the limited partners  
27 and their capital contributions, together with an undertaking by the foreign limited partnership to keep those  
28 records until the foreign limited partnership's registration in this state is canceled or withdrawn."

29  
30 **Section 17.** Section 35-12-1304, MCA, is amended to read:

1       **"35-12-1304. Name.** (1) A foreign limited partnership may register with the secretary of state under any  
2 a name (whether or not it is the name under which it is registered in its state of organization) that includes the  
3 words "limited partnership" and that could be registered by a domestic limited partnership if the foreign limited  
4 partnership name is distinguishable in the records of the secretary of state from:

5       (a) the name of another limited partnership authorized to transact business in this state; and

6       (b) any assumed business name, limited liability company name, limited liability partnership name,  
7 corporation, trademark, or service mark registered with the secretary of state.

8       (2) A foreign limited partnership may apply to the secretary of state for authorization to use a name that  
9 is not distinguishable in the secretary of state's records from one or more of the names described in subsection

10 (1)(b). The secretary of state shall authorize use of the name applied for if:

11       (a) the limited partnership that has previously registered the name with the secretary of state consents  
12 to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to change its  
13 name to a name that is distinguishable in the records of the secretary of state from the name of the limited  
14 partnership that is applying for the name; or

15       (b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of  
16 competent jurisdiction establishing the applicant's right to use the name for which the applicant applied."

17  
18       **NEW SECTION. SECTION 18. REPEALER. SECTION 35-1-1207, MCA, IS REPEALED.**

19       - END -